IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 18843 of 2007(R)

AGAINST THE ORDER IN IA.426,427/07 IN
OS.126/2001 of MUNSIFF COURT, VADAKARA

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PETITIONER:

M.M.CHANDRAN,
MAMENTA MEETHAL HOUSE, VADAKARA AMSOM, DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.C.VALSALAN
SRI.I.K.RAJU
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS:

PUNJAB NATIONAL BANK,
BRANCH OFFICE VADAKARA,
REP. BY ITS MANAGER, P.O. VADAKARA,
KOZHIKODE DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

WP(C).No. 18843 OF 2007 R

Dated this the 20th June, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Exts.P7, P9 and also Ext.P3. The writ petitioner is one of the judgment debtors in O.S.126/01. The learned counsel submits that he he is only a surety. But when a decree is passed and as the liability of the surety is similar to that of the principal debtor he cannot get away from the liability. In order to initiate the execution proceedings the decree holder filed an application under Order XXI Rule 41(2) calling upon the present writ petitioner to answer certain things as contemplated in the said Section. The writ petitioner did not do it. Therefore, as a corollary the court invoked its power under Order XXI Rule 41(3) and directed for detention of the writ petitioner in civil prison. It is against that order the present writ petition is filed. Learned counsel for the writ petitioner submits that it was on account of the reasons beyond his control that he was not in a position to file an affidavit as directed by the court. In the petition he had submitted that initially he lost his brother and subsequently his mother and thereafter he was laid up with chronic diabetics and he was admitted in the Malabar Hospital,

Kozhikode. So, these circumstances prevented him from appearing in the court and give an affidavit as contemplated under Order XXI Rule 41(2). Now, learned counsel submits that if two weeks' time is granted, he will certainly file an affidavit as contemplated. The intention of the decree holder is only to file an execution petition for the purpose of recovery of the debt and no purpose will be served by simply detaining this person in civil prison. Therefore, the order under challenge is set aside and the present writ petitioner is directed to file an affidavit as contemplated by law, within a period of three weeks from today. Since I have set aside the order, execution of the warrant and detaining in the civil present does not arise. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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